50437-5-II

No. 92992-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

RAINIER XPRESS,

Appellant,

vs.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

TRIPLE C COLLECTIVE, LLC,

Appellant,

vs.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

GREEN COLLAR CLUB,

Appellant,

vs.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Respondent.

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

In defending the trial court's grant of summary judgment in its favor, Respondent Department of Revenue asserts: (1) that Appellants Green Collar Club and Triple C Collective, management companies providing only management services to collective gardens whose members distributed medical marijuana to other members, were themselves engaged in "sales" of medical marijuana; (2) the Department offers the only reasonable interpretation of former RCW 82.08.0281(1) (2004)'s unambiguous retail sales tax exemption for prescription drugs as excluding medical marijuana sales; (3) even if the prescription drug exemption is ambiguous, legislative history supports the Department's interpretation; and (4) RCW 82.08.0283's retail sales tax exemption for botanical medicines used by licensed naturopaths in treating patients does not apply to medical marijuana sales. Each of these contentions fails, however.

First, the District continues to fail to distinguish between the appellant management companies and the collective gardens they managed. As the record indisputably demonstrates, it was the collective gardens and their members who distributed medical marijuana to fellow members. In contrast, the appellant management companies provided only recordkeeping, oversight of legal compliance, and other management services to the collective gardens that the Department admits it did not and does not seek to tax. Thus, regardless of the Department's characterization of the distributions of medical marijuana in this case—i.e., that they

constituted "sales"—they were not made by the appellant management companies. And, in the alternative and at a minimum, the facts viewed in the light most favorably to Appellants raised a genuine issue of material fact regarding whether the appellant management companies themselves distributed medical marijuana.

Second, the Department's interpretation of former RCW 82.08.0281 primarily relies on references to extrinsic, purportedly "related" statutes. In doing so, however, the Department contravenes well-established Washington law delineating when statutes are "related" for purposes of statutory interpretation. Here, the extrinsic statutes referenced by the Department are not related to the tax exemption where they are entirely unrelated to the express legislative purpose of the statutory language at issue—bringing Washington's tax code into compliance with a multistate retail sales and use tax agreement—and where the tax exemption is devoid of any reference to these extrinsic statutes. The Department's interpretation further contravenes Washington's rules of statutory interpretation by attempting to bootstrap extrinsic sources into statutorily-defined terms: adding terms to statutes where the legislature chose not to do so; and ignoring the entirety of the statute and basic rules of grammar. In contrast, Appellants offer the only interpretation of the statute that aligns with these requirements and harmonizes the statute's terms within the statute as a whole.

Third, the solitary piece of legislative history cited by the Department contradicts the plain language of former RCW 82.08.0281,

rendering it inapplicable for purposes of statutory of interpretation. Rather, the relevant legislative history comports with Appellants' interpretation of the exemption: medical marijuana sales fell within the exemption until 2014, when the legislature expressly excluded them and in anticipation of implementing a unitary statutory and regulatory scheme for recreational and medical marijuana, including a specific tax exemption for medical marijuana.

Finally, the Department once again improperly attempts to import extrinsic statutes in support of its interpretation of RCW 82.08.0283's tax exemption for retails sales of botanical medicines used by licensed naturopaths in treating patients. Instead, the legislature chose to define "medicine" in terms of its nature ("botanical") and its origination from licensed naturopaths ("prescribed, administered, dispensed, or used in the treatment of an individual" by a licensed naturopath). Because Washington law permits naturopaths to opine that the medical use of marijuana may benefit patients treated by them and to authorize its use, naturopaths can and do use medical marijuana in treating patients. Accordingly, Appellants, not the Department, were entitled to summary judgment under this exemption as well.

II. ARGUMENT

A. Both Appellant Green Collar Club and Triple C Collective Were Management Companies Providing Services to Collective Gardens Distributing Marijuana to Qualifying Patients

The Department's lengthy characterization of the facts concerning

the collective gardens to whom Appellants Green Collar Club and Triple C Collective provided management services entirely fails to ***distinguish*** between the collective gardens and the management companies. The undisputed record in this case is that the management companies were, in fact, separate entities. For example, the formation agreements for each collective garden managed by these two Appellants clearly distinguished between the collective gardens and the management companies as separate entities.[1]

Furthermore, as detailed in Appellants' Opening Brief, the record further establishes the distinction between the activities of the collective gardens and those of Appellants. The collective gardens themselves maintained their own grow sites and provided a "fixed location" and "central facility" for its operations, including contributions of money to the gardens and the "delivery" of medical marijuana by members to members.[2] In turn, the Appellant management companies coordinated and oversaw the gardens' activities by providing management services such as managing the gardens' finances, recordkeeping, and ensuring that the gardens' activities complied with state law.[3] Appellants were then compensated for these services from the gardens' collective funds comprised of the contributions made by the gardens' members.[4]

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[1] Clerk's Papers ("CP") at 324-326, 341-343.

[2] CP at 325-326, 342-343; Appellants' Opening Br. at 4-6.

[3] CP at 77-78; 282-283; 352-353; 355-356; 449-450; 438-440; 442-443; 466; Appellants' Opening Br. at 4-5

[4] 318, 326, 335, 343, 353, 356.

Simply put, the Department's focus on the way the collective gardens managed by Appellants provided medical marijuana to their members—i.e., whether medical marijuana was sometimes provided after a monetary contribution—is entirely misplaced. Appellants are the taxpayers in this case. Appellants provided only management services to the collective gardens. As the Department concedes, it did not and does not contend that these services were subject to retail sales tax.[5] Thus, rather than "engag[ing] in a charade" to avoid paying retail sales tax as the Department misrepresents, Appellants dutifully paid under protest retail sales tax wrongfully assessed by the Department; unsuccessfully applied to the Department for refunds; and then appealed to the trial court and moved for summary judgment.[6] Because the Department concedes it did not seek to tax these services, the trial court erred in denying Appellants' motion for summary judgment. And, in the alternative, a genuine issue of material fact existed regarding whether the Appellant management companies themselves directly were receiving monetary contributions from collective garden members in exchange for medical marijuana where the undisputed facts demonstrate that contributions were made to the gardens' collective funds and the gardens then paid Appellants for their management services from those funds. Thus, at a minimum, the trial court erred in granting the Department's summary judgment motion.

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[5] Brief of Respondent ("Respondent's Br.") at 14.

[6] CP at CP at 129; 156; 250; 302; 354; 358-387; 389-403; 405-422; 553.

B. Former RCW 82.08.0281's Retail Sales Tax Exemption for Sales of Prescription Drugs Applied to Medical Marijuana Sales

In the alternative, all three Appellants were entitled to summary judgment because, under well-recognized principles of statutory interpretation, former RCW 82.08.0281's retail tax exemption for prescription drugs unambiguously applied to medical marijuana sales.

1. The Department's Interpretation of Former RCW 82.08.0281(1) Contravenes Both the Statute's Plain and Unambiguous Language and the Rules of Statutory Interpretation

Former RCW 82.08.0281(1) (2004), the prescription drug retail sales tax exemptions, provided: "The tax levied by RCW 82.08.020 does not apply to sales of ***drugs*** for human use ***dispensed or to be dispensed to patients***, pursuant to a ***prescription***." (Emphases added). The Department contends that this plain language unambiguously did not apply to medical marijuana sales because: (1) medical marijuana was not "dispensed" pursuant to a prescription; (2) medical marijuana authorizations are not "prescriptions" as statutorily-defined by the tax exemption; (3) the exemption requires a practitioner to be authorized to prescribe the particular substance at issue; (4) applying Appellants' interpretation of the exemption would lead to absurd results; (5) neither Washington nor federal law permits medical marijuana to be prescribed; and (6) Washington's medical marijuana initiative did not address the tax status of medical marijuana sales. Each of these contentions fails, however.

First, former RCW 82.08.0281(1) did not define the term "dispensed." The Department, citing *LaCoursiere v. Camwest Dev., Inc.*,

181 Wn.2d 734, 741-42, 339 P.3d 963 (2014), urges the Court to apply the definition of "dispense" provided in a "related" statute, chapter 69.50 RCW, the Washington Uniform Controlled Substances Act ("Controlled Substances Act").[7] But the Controlled Substances Act is not a related statute for purposes of statutory interpretation.

Jametsky v. Olsen, 179 Wn.2d 756, 763, 317 P.3d 1003 (2014) is on all four corners. In *Jametsky*, the respondents argued that RCW 84.64.050 was a "related statute" for purposes of defining an undefined term in chapter 61.34 RCW, the Distressed Property Conveyances Act ("DPCA"). 179 Wn.2d at 764. However, this Court observed that it considers "only those extrinsic statutes 'which disclose legislative intent about the provision in question.'" *Jametsky*, 179 Wn.2d at 765 (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002)). Because chapter 84.64 RCW pertained "exclusively to the procedures related to tax foreclosure and redemption, not remedies afforded defrauded homeowners," this Court reasoned that "[n]othing in RCW 84.64.050" related to the DPCA's "stated legislative intent" of "protect[ing] innocent homeowners from equity skimming and other misconduct that contravenes public policy." *Jametsky*, 179 Wn.2d at 766.

Moreover, this Court observed that "'[t]he legislature is presumed to enact laws with full knowledge of existing laws.'" *Id.* (quoting *Thurston County v. Gorton*, 85 Wn.2d 133, 138, 530 P.2d 309 (1975)). Because the

[7] Respondent's Br. at 22-23.

DPCA was "replete with external references" to other statutes but lacked any reference to RCW 84.64.050, this Court reasoned that the lack of such references "[could not] be viewed as accidental." *Jametsky*, 179 Wn.2d at 766. Thus, it concluded that RCW 84.64.050 was not related for purposes of interpreting the DPCA. *Id.*

Like the statutes considered in *Jametsky*, nothing in chapter 69.50 RCW relates to the legislature's express purpose intent in enacting the language at issue in former RCW 82.08.0281(1). The former is a statutory scheme for regulating the manufacture, distribution, and use of controlled substances, including civil and criminal penalties. *See, generally,* chapter 69.50 RCW. The latter is a tax exemption whose specific language (including the phrase at issue, "dispensed or to be dispensed")[8] was first enacted in 2003 in order to "join as a member state in the streamlined sales and use tax agreement referred to in chapter 82.58 RCW" by "bring[ing] Washington's sales and use tax system into compliance with the agreement so that Washington may join as a member state and have a voice in the development and administration of the system, and to substantially reduce the burden of tax compliance on sellers." Laws of 2003, ch. 168, §§ 1, 403. Thus, the former "sheds little light" on the stated legislative intent of the latter. *Jametsky*, 179 Wn.2d at 766.

Moreover, like the statutes considered in *Jametsky*, former RCW

[8] Prior to the 2003 amendment, RCW 82.08.0281 did not analogously utilize the terms "dispense or to be dispensed"; rather, the analogous term was "supplied." Former RCW 82.08.0281 (2003).

82.08.0281 (2004) contains references to numerous other statutes and extrinsic sources, such as a reference to 21 C.F.R. § 201.66 for purposes of defining the term "[o]ver-the-counter drug." Former RCW 82.08.0281(4)(c); *see also* former RCW 82.08.0281(4)(b)(i). But the statute lacks ***any*** reference to chapter 69.50 RCW. Thus, this Court cannot view this lack of reference as accidental. *Accord Jametsky*, 179 Wn.2d at 766. The legislature enacted this specific language with knowledge of other legislation (and, indeed, defined some terms by reference to extrinsic statutes and sources) but chose not to do so by referencing the Controlled Substances Act. Accordingly, the Controlled Substances Act is not a "related statute" for purposes of interpreting the term "dispensed" or any other term in former RCW 82.08.0281(1).

Instead, the Court should utilize a dictionary definition in interpreting the undefined term "dispensed." *LaCoursiere*, 181 Wn.2d at 741-42. Webster's Third New International Dictionary defines "dispense" most relevantly as "to prepare and give (medicine) to the sick." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 653 (2002). Medical marijuana clearly meets this definition. For example, the record demonstrates that the two collective gardens' members were responsible for, among other duties, harvesting and processing—i.e., preparing—the medical marijuana they grow for dispensation and use; furthermore, patients obtaining medical marijuana from the gardens saw a "specialist who discusse[d] the various product options and recommend[ed] the best course

of treatment."[9] Likewise, patients acquired pre-prepared medical marijuana from Appellant Rainier Xpress only after "consultation with a cannabis expert" during which "the patient [wa]s made aware of the best method of intake and dosing on an individual basis."[10] Thus, medical marijuana is a "drug" "dispensed or to be dispensed" pursuant to a medical authorization. Thus, the relevant inquiry becomes whether medical marijuana is dispensed "pursuant to a prescription" as specifically defined by former RCW 82.08.0281(4).

Second, the Department contends that medical marijuana is not dispensed pursuant to a "prescription" as defined by former RCW 82.08.0281(4)(a) because a medical marijuana authorization is not an "order, formula, or recipe."[11] In doing so, it again invites the Court to refer to chapter 69.50 RCW and various federal statutes, such as one defining "prescription."[12] But as discussed above, these statutes are not "related" for purposes of statutory interpretation because they shed no light on former RCW 82.08.0281's stated legislative purpose of coming into compliance with the multistate streamlined sales and use tax agreement and RCW 82.08.0281 contains no reference to them. Moreover, it is improper to look outside the statute to define "prescription"—particularly by examining an entirely different federal definition of "prescription"—where the legislature

[9] CP at 25, 76, 83, 650, 1041, 1084, 1092.

[10] CP at 480.

[11] Respondent's Br. at 24-27.

[12] *Id.* at 25-26.

has already defined that term. *State v. Reis*, 183 Wn.2d 197, 208, 351 P.3d 127 (2015).

Rather, the only proper inquiry is the plain and ordinary meaning of the terms "order, formula, or recipe" within that definition. For the reasons already discussed in Appellants' Opening Brief, medical marijuana authorizations plainly fall within these terms' meaning in both form and function.[13] Accordingly, the Department's contention fails, and the trial court erred in granting summary judgment in favor of the Department instead of Appellants.

Third, the Department admits that its interpretation adds additional terms not in the statute: "a duly licensed practitioner authorized by the laws of this state to prescribe [the item being prescribed]."[14] In doing so, it admits the impropriety of its interpretation as this Court "must not add words where the legislature has chosen not to include them." *Restaurant Development, Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003). The Department attempts to justify adding terms by contending the statute is incomplete.

But the Department is mistaken. Former RCW 82.08.0281(4)(a) defined "prescription" in terms of the legal authority of the prescription's author to issue prescriptions, i.e., "an order, formula or recipe issued . . . by a duly licensed practitioner authorized by the laws of this state to prescribe." As used within former RCW 82.08.0281, the statute as a whole obviates any

[13] Appellants' Opening Brief at 20-22.

[14] Respondent's Br. at 28-29.

"need" for that definition to further define ***what*** is prescribed; subsection 4(b) separately defined the term "drug" and the tax exemption as a whole expressly stated that it applied to "sales of drugs for human use . . . dispensed or to be dispensed . . . pursuant to a prescription." Thus, when the term "prescription" is read in the context of the entire statute, it is complete in and of itself: the exemption provides and defines the term "drugs" as the object of the term "prescription."

Fourth, the Department argues that Appellants' interpretation of former RCW 82.08.0281 would lead to the absurd result of tax-exempt sales of illegal "drugs much more harmful than marijuana."[15] Respectfully, it is the Department's illusory concern that is absurd. Both the Department's brief and the record are devoid of any evidence of, for example, illegal drug dealers reporting their sales to the Department at all, let alone claiming exemptions for them. This Court cannot interpret a statute by assuming the legislature intended to avoid an absurd "result" that exists purely in the realm of rhetorical parades of horribles.

Fifth, the Department again argues that Appellants' interpretation of former RCW 82.08.0281 is unreasonable by attempting to define the statutorily-defined term "prescription" by reference to extrinsic statutes and sources. Once again, as discussed above, the Department's attempt to bootstrap in extrinsic sources is inappropriate where the statute already defines the term "prescription" and those sources are not "related" for

[15] Respondent's Br. at 31.

purposes of statutory interpretation.

Sixth, and finally, the Department argues that Appellants' interpretation of former RCW 82.08.0281 is unreasonable because Initiative 692, whose adoption by voters in 1998 authorized the use of medical marijuana, contained no express references to tax exemptions.[16] Thus, the Department contends, Initiative 692 did not create a tax exemption for medical marijuana sales.[17]

But the Department's argument is misplaced. Appellants do not contend that Initiative 692 created a new tax exemption for medical marijuana. Rather, Appellants contend that medical marijuana sales fell within the plain language of an existing tax exemption.[18] Indeed, if anything, reference to Initiative 692 only supports this conclusion, as this Court must presume the legislature first enacted the language at issue in this case in 2003 and amended it in 2004 with full knowledge of existing laws, including Washington's medical marijuana laws. *Jametsky*, 176 Wn.2d at 766. Thus, where medical marijuana sales fell within the newly-enacted language of this exemption, this Court must presume that the legislature knew of them but chose not to exclude them.

2. Relevant Legislative History Confirms Appellants' Interpretation

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[16] Respondent's Br. at 36-37.

[17] *Id*

[18] For this reason, the case cited by the Department, *TracFone Wireless, Inc. v. Dep't of Revenue*, 170 Wn.2d 273, 297, 242 P.3d 810 (2010), is inapposite. *TracFone* involved a defendant claiming that its activities did not fall within a statute imposing a tax, not that it fell within a tax exemption already created by the legislature. *TracFone*, 170 Wn.2d at 297

Next, the Department contends that, if former RCW 82.08.0281 was ambiguous, legislative history supports its interpretation. However, none of the Department's arguments are persuasive.

First, the Department argues its interpretation prevails because ambiguities in a tax exemption statute are construed against the taxpayer. However, it omits that Washington law actually states that this principle is merely a presumption applied against the taxpayer, and even then only "fairly" and "in keeping with the ordinary meaning" of the exemption's language. *Tesoro Refining and Marketing Co. v. Dep't of Revenue*, 164 Wn.2d 310, 317, 190 P.3d 28 (2008). Here, even if the exemption is ambiguous, the interpretation offered by the Department is not possible under—much less in keeping with—the exemption's plain language. In contrast, as explained in Appellants' Opening Brief, the statute's plain and ordinary language requires Appellants' interpretation of the statute.

Second, the Department contends that the final bill report for the 2004 bill amending former RCW 82.08.0281 stated that "[a] prescription . . . must be prescribed by a person whose license authorizes him or her to prescribe the item or drugs." Final S.B. Rep. on S.B. 6515 at 2, 58th Leg., Reg. Sess. (Wash. 2004). But the bill report's statement squarely contradicts the plain language of the definition of "prescription" enacted by the legislature. Washington courts reject legislative history such as bill reports that contradict the adopted statutory language. *C.J.C. v. Corporation of Catholic Bishop of Yakima*, 138 Wn.2d 699, 713 n. 6, 985 P.2d 262 (1999). Accordingly, the Department's contention fails.

Instead, the relevant and applicable legislative history confirms Appellants' interpretation of the tax exemption. Senate Bill 6505 was signed into law as the 2014 act amending numerous statutes, including former RCW 82.08.0281's definition of "drug." S.B. 6505, 63rd Leg., Reg. Sess. (Wash. 2014); Laws of 2014, ch. 140, § 19. Both the Senate and House bill reports on S.B. 6505 expressly stated that, under the bill, "[m]arijuana, useable marijuana, and marijuana-infused products ***are*** excluded from existing tax preferences." Final S.B. Rep. on S.B. 6505 at 2, 63rd Leg., Reg. Sess. (Wash. 2014); H.B. Rep. on S.B. 6505 at 2, 63rd Leg., Reg. Sess. (Wash. 2014). If, as the Department contends, medical marijuana was already excluded from the prescription drug retail sales tax exemption, then the legislature would have had no need in 2014 to exclude marijuana from that exemption. *John H. Sellen Constr. Co. v. Dep't of Revenue*, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976) ("[T]he legislature does not engage in unnecessary or meaningless acts, and we presume some significant purpose or objective in every legislative enactment.").

Indeed, other portions of S.B. 6505 and subsequent legislative history confirm that S.B. 6505 was a necessary, temporary removal of medical marijuana from retail sales tax exemption to allow the legislature time to restructure applicable law—including tax exemptions—to accommodate Washington's legalization of recreational marijuana. As both bill reports noted, via Initiative 502 in 2012, Washington voters had approved sales, possession, and use of recreational marijuana, subject to state regulation. Final S.B. Rep. on S.B. 6505 at 2; H.B. Rep. on S.B. 6505

at 2. Both bill reports further described the bill's purpose as precluding "*[d]elaying* the use of ***existing*** tax preferences by the marijuana industry to ensure a regulated and safe transition to the controlled and legal marijuana market in Washington." *Id.* If, as the Department contends, medical marijuana retailers had no ability to utilize existing tax preferences like the prescription drug exemption, then it was entirely unnecessary to "delay" such use. But the Court must presume that the legislature does not engage in unnecessary acts. Essentially, then, S.B. 6505 served as a stopgap measure removing marijuana in general from the existing exemption until the legislature could implement further regulation of the market.[19]

In 2015, the legislatively-contemplated further regulation arrived. This 2015 legislation created a "comprehensive regulatory scheme" merging medical marijuana with the licensing and regulatory structure for recreational marijuana and creating a medical marijuana authorization database and recognition card. Laws of 2015, ch. 70, § 2, 17, 19. In the same year, the legislature also found that unregulated marijuana sellers, both medical and non-medical, held competitive advantages over regulated retailers and that the legislature wished to restructure the tax scheme in order to create price parity between the regulated and unregulated entities and to increase he market share of regulated entities. Laws of 2015, ch. 4,

[19] It was entirely conceivable and reasonable for the legislature temporarily to remove medical marijuana from retail sales tax exemption after the advent of recreational marijuana legalization. Sellers of medical marijuana could engage in such sales outside the regulation imposed on recreational marijuana retailers. The legislature simply removed medical marijuana from the tax exemption equation until it could decide whether and how to distinguish between recreational and medical marijuana retailers, implement further regulation of both markets, and establish the proper tax policies regarding each.

§ 101. It further found that the medical use of marijuana by qualifying patients "is a valid and necessary health care option" and expressly stated its "specific . . . objective . . . to provide qualifying patients . . . retails sales and use tax exemption on marijuana purchased or obtained for medical use when authorized by a health care professional." *Id.* At the same time, however, it found for the first time that "due to the unique characterization of authorizations for the medical use of marijuana," it had to distinguish between such authorizations and prescriptions for other drugs and separate any tax exemption for the former from any tax exemption for the latter. *Id.*

Thus, the legislature reinstated the retail sales tax exemption for medical marijuana products meeting certain statutory criteria, but only for "marijuana retailers with medical marijuana endorsements to qualifying patients . . . who have been issued recognition cards." *Id.*, § 207. It also reinstated this tax exemption as a separate tax exemption in chapter 82.08 RCW, not as a further amendment to RCW 82.08.0281's prescription drug retail sales tax exemption. *Id*

These 2015 legislative acts are entirely consistent with medical marijuana's previous exemption from retail sales tax as a prescription drug and 2014's S.B. 6505. S.B. 6505 prevented the use of existing tax preferences by the marijuana industry by removing medical marijuana from the prescription drug exemption until the legislature ascertained how best to transition the industry as a whole into a regulated market. In 2015, the legislature determined the best course of action was to fold the medical marijuana industry into the recreational marijuana regulatory scheme;

consistent with this purpose and S.B. 6505, it restored the retail sales tax exemption for medical marijuana, but only with certain regulatory conditions attached. Consistent with its new finding of a necessity for distinguishing between prescriptions and medical marijuana authorizations, it also opted to restore tax exemption for medical marijuana sales by creating a new statute, rather than folding those sales back in to the prescription drug exemption. Accordingly, subsequent legislative history of both the retail sales tax exemption and medical marijuana in Washington is consistent with Appellants' interpretation of former RCW 82.08.0281, not the Department's interpretation. Therefore, the trial court erred in granting summary judgment in favor of the Department instead of Appellants.

C. RCW 82.08.0283 Applies to Sales of Marijuana Products for Medical Use

Finally, the Department argues that RCW 82.08.0283(1)(b), the retail sales tax exemption for "[m]edicines of . . . botanical origin . . . used in the treatment of an individual by a person licensed [as a naturopath] under chapter 18.36A RCW," does not apply to medical marijuana sales because medical marijuana does not fall within RCW 18.36.020's definition of "naturopathic medicines."[20] For a final time, however, the Department improperly attempts to import an extrinsic statutory definition to define terms within this tax exemption. The plain language of this exemption clearly demonstrates that the legislature was aware of chapter 18.36A RCW,

[20] Respondent's Br. at 40-43

as the exemption references it, but the legislature nonetheless chose to omit its definitions or any references thereto for purposes of the tax exemption. Rather, it chose to define "[m]edicines of . . . botanical origin" only in terms of those "prescribed, administered, dispensed, or used in the treatment of an individual" by a naturopath licensed under chapter 18.36A RCW. As discussed in Appellants' Opening Brief, Washington law permits licensed naturopaths to use marijuana—albeit not directly—in the course of their treatment of patients by authorizing its medical use by the patient.[21] Accordingly, the trial court erred in granting summary judgment in favor of the Department instead of Appellants with respect to any medical marijuana sales made pursuant to written authorizations issued by naturopaths.

III. CONCLUSION

For the foregoing reasons, Appellants respectfully ask this court to reverse the trial court's order denying summary judgment in favor of Appellants and granting summary judgment in favor of the Department.

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[21] Appellants' Opening Br. at 25-26.

RESPECTFULLY SUBMITTED this 17th day of February 2017.

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CERTIFICATE OF SERVICE

Sarah Awes, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on February 17, 2017, I served via the Court's Electronic Filing System, a true and correct copy of the above document, directed to:

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DATED this 17th day of February 2017.

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